

Appl. No. 10/753,974
Amdt. dated September 20, 2006
Reply to Office Action of June 20, 2006

REMARKS/ARGUMENTS

Claims 1-21 are presented for the Examiner's consideration. Claim 21 has been amended. Claims 1-20 are the original claims.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

The foregoing amendments to the specification correct an obvious typographical error. In any event, the specification supports that the hydrophilic fibers make up greater than 65% to 80% of the microfibers in the cover layer, with the remaining fibers in the cover layer, are hydrophobic. For example, the examples of the specification make it clear that the majority fiber in the cover layer is hydrophilic, not hydrophobic. As a result, one skilled in the art would clearly recognize that the last appearance of the term "hydrophilic" in the amended paragraph should have been hydrophobic, as the paragraph was amended. Therefore, no new matter is introduced by the amendment to the specification since the amendment to the specification corrects an obvious typographical error.

The foregoing amendments to the claims correct claim 21 to address the claim objection set forth by the Examiner. Support for claim 21, as amended, may be found in the specification for the same reasons the amendment to the specification is supported.

Claim 2 was rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Fell et al. U.S. Patent Application Publication No. 2004/0253894. This rejection is respectfully traversed.

Before addressing this and the other rejections made in the Office Action dated February 22, 2005, Applicants believe it would be beneficial to describe the present invention. As claimed, the claims are directed to a disposable absorbent liner, having a cover layer, a removable backing layer and a liquid impermeable baffle layer. As is set forth in claim 2, the cover layer comprises a mixture of hydrophilic microfibers and hydrophobic microfibers wherein a larger quantity of hydrophobic microfibers are located at the top surface than are a quantity of hydrophilic microfibers located at the top surface based on a total weight of the mixture of microfibers in the cover layer. In addition, the cover layer has a top surface and an opposite bottom surface.

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In the statement of the rejection based on Fell et al., the Examiner relies on the discussion of the absorbent layer to reject the claims of the present application. As is set forth in paragraph [0062] of Fell et al., the absorbent article has a liquid permeable cover 12, a liquid permeable baffle 14 and an absorbent core 16. In the present claims, the Applicants' claims are directed to a liner having a cover and a liquid impermeable baffle layer. The term "cover" in cover layer as set forth in the Applicants' specification and as set forth in Fell et al., means a layer that contacts the wearer's body. This term "cover" has an art-recognized meaning and is the layer that contacts the user's body during use. Other terms for "cover" include, for example, "bodyside liner" or "liquid permeable liner" and each of these terms have a clear art recognized meaning as can be easily seen in paragraphs [0062-0063] of Fell et al., wherein the body side liner is described. Therefore, the equivalent structure in Fell et al. to the claimed cover layer in the Applicants' present claims is the bodyside liner layer, not the absorbent layer.

Even if the absorbent layer of Fell et al. could be construed as a cover layer, which the Applicants deny that it could be construed, the Examiner's rejection fails to clearly state why Fell et al. anticipates the present claims. In the rejection, the Examiner states:

"[t]he first group of hydrophilic fibers 28 is present in an amount between 30-95% and the binder (hydrophobic) fibers are present in an amount between 5 to about 40%, **therefore it is possible that the hydrophobic fiber would be present in greater (sic) amount and thus more prevalent at the top surface of layer 24**" (*emphasis added*)

By the Examiner's own admission in the statement of the rejection, the claim requirement that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis is not taught by Fell et al. There is nothing in Fell et al. that teaches in the absorbent layer the quantity hydrophobic fibers are located at the surface is greater than the quantity of hydrophilic fibers located at the surface, on a weight basis. Just because something is possible within a reference, does not mean that the reference teaches that possibility.

In order for there to be anticipation of a claim by a reference, each and every claim limitation must be taught by the reference. Given that Fell et al. do not teach that the cover of Fell et al. nor the absorbent layer, which the Examiner finds to be a cover, has a quantity of hydrophobic fibers at the surface of the cover layer which is greater than the amount of hydrophilic fibers at the top surface, on a weight basis. Fell et al. do not anticipate claim 2, as suggested by the Examiner.

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Applicants also note that claims 5, 9, 11-13, and 15-21 also appear to be rejected as being anticipated by Fell et al., even though the statement of the rejection only indicates that claim 2 is rejected. Each of these claims depend from claim 2 and also include all of the limitations of claim 2. Given that claim 2 is not anticipated by Fell et al., for the reasons stated above, claims 5, 9, 11-13 and 15-21 are also not anticipated by Fell et al.

Claims 1, 3, 4, 6-8, 10 and 14 were rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Fell et al. U.S. Patent Application Publication No. 2004/0253894 in view of Cartwright et al., U.S. Patent Application Publication No. 2005/0079987. This rejection is respectfully **traversed**.

Applicants traverse this rejection on the basis that Cartwright et al. and Fell et al. are not combinable together since Cartwright et al. is directed to a premoistened antimicrobial wipe or pad (which may be placed on a cleaning implement) and Fell et al. directed to an absorbent personal care article. In the statement of the rejection, the Examiner states that Cartwright et al. teach an absorbent pad with an absorbency of 5-15 g/g which the Examiner relies to cure what the Examiner perceives as a deficiency in Fell et al. The Examiner has not addressed the issue of why one skilled in the art would look to the premoistened antimicrobial wipe art to solve a problem relating to an absorbent pantiliner.

It is well established that the Examiner must determine what is analogous prior art for the purposes of analyzing the obviousness of the subject matter at issue. (See MPEP 2141.01) The Examiner has failed to clearly state why Cartwright et al. is reasonably pertinent to solving the deficiencies of Fell et al., as applied to the present claims. Applicants note that Fell et al. is within Applicants' field of endeavor, but Cartwright et al. is not.

Even if Cartwright et al. is combined with Fell et al. as suggested by the Examiner, Cartwright et al. fail to cure the deficiencies of Fell et al. Specifically, the Examiner does not address how the combination of Fell et al. and Cartwright et al. teach the claim limitations of claims 1 and 3 which require that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis. As with the rejection under 35 USC § 102(e) based on Fell et al., the Examiner again, in the statement of the rejections states:

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"[t]he first group of hydrophilic fibers 28 is present in an amount between 30-95% and the binder (hydrophobic) fibers are present in an amount between 5 to about 40%, ***therefore it is possible that the hydrophobic fiber would be present in greater (sic) amount*** and thus more prevalent at the top surface of layer 24" (*emphasis added*)

By the Examiner's own admission in the statement of the rejection, the claim requirement that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis is not taught by Fell et al. There is nothing in Fell et al. that teaches in the absorbent layer the quantity hydrophobic fibers are located at the surface is greater than the quantity of hydrophilic fiber located at the surface, on a weight basis. In addition, the Examiner has not addressed how Cartwright et al. cure or address this deficiency of Fell et al.

In order for a claim to be held obvious, the claimed invention "as a whole", including all of the limitations of the claims, must be taught or suggested in the references relied upon by the Examiner. Given that the limitations of the independent claims 1 and 3 do not teach the claim requirement that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis, the combination of Fell et al. and Cartwright et al. fail to render the claims obvious within the meaning of 35 USC § 103. Therefore, this rejection is untenable and should be withdrawn.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3892.

Respectfully submitted,

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